

AMENDMENT TO
AGREEMENT REGARDING ALTERNATIVES AND PROPERTY ACQUISITION
Milwaukee II Levee Improvement Project
River Mile 24.04 to 24.25 Right Bank

THIS AMENDMENT NO. 1 TO AGREEMENT REGARDING ALTERNATIVES AND PROPERTY ACQUISITION (“Amendment No. 1”) governing the Milwaukee II Levee Improvement Project, River Mile 24.04 to 24.25, Right Bank, is entered into on the last date signed below by and between the CITY OF KENT, a Washington municipal corporation (“City”), and KING COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi-municipal corporation of the State of Washington (“District”) (collectively, the "Parties").

I. RECITALS

A. The Parties entered into an Agreement Regarding Alternatives and Property Acquisition on June 28th, 2016 (“Agreement”), concerning an analysis and study of alternatives (“Study”) and property acquisition of King County Tax Parcel Numbers 000660-0082 and 000660-0017 (“Property”) in support of the project to improve the Milwaukee II Levee (“Project”). Efforts to acquire these tax parcels are continuing.

B. The Agreement authorized the City to complete an alternative analysis study and to acquire the Property, with the District agreeing to reimburse the City for its actual costs incurred in completing those tasks. The maximum allowable reimbursement amount the District authorized through the Agreement was \$3,650,000. Since the Agreement’s execution nearly four years ago, the City has obtained appraisals for the Property and engaged in negotiations with the owners. Those appraisals indicate that the maximum allowable reimbursement amount authorized by the Agreement will be insufficient to reimburse the City for its estimated actual costs incurred in acquiring the Property.

C. In addition, the owner’s use of King County Tax Parcel Number 000660-0082 is so closely intertwined with another parcel, King County Tax Parcel Number 000660-0079, that it too requires the City may also need to purchase this parcel, though the parcel is not required for the Project. As a matter of law, when separate tracts of land are owned by the same owner and put to a single use, for purposes of determining just compensation, they must be treated as a single parcel.

D. The City has presented the District with a revised estimate of project costs, which estimate includes the costs incurred to obtain the Study and revised Property acquisition costs that have been adjusted to account for the current appraisal values. It is therefore appropriate to amend the Agreement to adjust its 2016 reimbursement budget.

E. It is appropriate for the City to move forward with removal of existing structures, utilities and other appurtenances.

II. AMENDMENT

NOW THEREFORE, in consideration of the mutual interest, desire, and promises of the parties and other good and valuable consideration, the Parties agree as follows:

2.1 Recitals Incorporated. All recitals above are hereby incorporated in and ratified as part of this Amendment No. 1.

2.2 Acquisition and Transfer of Property Interests. Section 3 of the Agreement is amended to further provide that the City will acquire King County Tax Parcel Number 000660-0079, at the District's costs and expense, should it be determined that such parcel constitutes a single larger parcel associated with King County Tax Parcel Number 000660-0082 and not separate parcels for purposes of determining just compensation. Toward that end, an amended **Exhibit A** is attached and incorporated herein.

2.3. Removal of Structures. The Agreement is amended to include the following new provisions concerning the removal of structures once property is acquired under the Agreement and this Amendment No. 1.

a. Once each parcel that is required for the Project is acquired and the City has title and possession to the Property, the City will hire a contractor to demolish and remove all structures on the Property, including any existing septic tank, oil heating system, or other appurtenances associated with the Property.

b. The City shall obtain and be responsible for all necessary local, state, and federal permits and approvals necessary to carry out the demolition and removal work described above, and shall fully comply with all applicable requirements and conditions thereof.

c. The District agrees it will reimburse the City for the City's actual costs and expenses incurred in the demolition and removal work provided for in this Section 2.3, and those reimbursement requests will be submitted and paid in accordance with Section 4 of the Agreement.

2.4 Maximum Reimbursement for City Costs and Expenses. Section 4.a. of the Agreement is amended to increase the maximum reimbursement for City costs and expenses from \$3,650,000 to \$11,000,000, which amount is intended to compensate the City for those City costs and expenses associated with acquiring the Study and the necessary property interests provided for by the Agreement.

2.5 Duration-Effective Date. Section 5 of the Agreement is amended by deleting the entirety of that section and replacing it with the following: "This Agreement shall take effect on

the date on which the second party signs this Agreement, and shall remain in effect until the City both acquires fee title to the property described in **Exhibit A** and further conveys to the District any easements the District may require to construct the Project.”

2.6 Insurance. Section 10 of the Agreement is amended by deleting the entirety of that section and replacing it with the following: The District recognizes that the City is self-insured and accepts such coverage for liability arising under this Agreement. The City recognizes that the District is a member of the risk-pool Enduris, in an amount not less than One Million Dollars (\$1,000,000) per occurrence with a reinsurance liability policy of not less than Ten Million Dollars (\$10,000,000) and will provide the City with an Evidence of Coverage (EOC) pursuant to Chapter 48.62 RCW.

2.7 Remaining Provisions. Except as specifically amended by this Amendment No. 1, all remaining provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1, which shall become effective on the last date signed below.

CITY OF KENT

**KING COUNTY FLOOD CONTROL
ZONE DISTRICT**

By: _____
Dana Ralph
Its: Mayor

By: _____
Dave Upthegrove
Its: Board Chair

DATE: _____

DATE: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
Legal Counsel

EXHIBIT A
Property Interests that May be Acquired by City of Kent

Drexel Investments LLC
Tax Parcel Number: 000660-0017

Parcel A:

Beginning at a point on the East line of the Cavanaugh Tract and the South line of County Road which is 810.48 feet, more or less, East and 2,914.56 feet, more or less, South of the Northwest corner of the Samuel W. Russell Donation Land Claim Number 41, Section 24, Township 22 North, Range 4 East, W.M., in King County, Washington;
Thence South to the White River;
Thence Westerly along the North bank of the White River to the Easterly line of Chicago Milwaukee St. Paul and Pacific Railroad;
Thence Northerly along said Easterly line to the Southerly line of said County Road;
Thence Easterly along said road line to Point of Beginning.

Parcel B:

Beginning 810.48 feet East and 2,914.56 feet South of the Northwest corner of Samuel W. Russell Donation Claim Number 41, Section 24, Township 22 North, Range 4 East, W.M., in King County, Washington;
Thence South 82.5 feet, more or less, to White River;
Thence Northeasterly along river, 198 feet to the South line of County Road;
Thence Westerly to the Point of Beginning.

Amrik Commercial Rentals LLC
Tax Parcel Number: 000660-0082

That portion of the S.W. Russell Donation Land Claim No. 41, in King County, Washington, described as follows:

Commencing at the Southeast corner of Waterman's Acre Tracts to the Town of Kent, according to plat recorded in Volume 12 of Plats at page(s) 11, in King County, Washington;

Thence South 88°02'30" West along the South line of said plat 713.08 feet to the Southerly production of the West line of South Third Avenue, as conveyed to the City of Kent by deed Dated July 11, 1955 and recorded under Recording No. 4599830;

Thence South 1°55'37" East along said West line, and said West line produced, 1179.70 feet to an angle point in the Southerly line of that tract of land conveyed to C.L. Knudtsen, W.H. Meadowcroft and Fred E. Meadowcroft by deed dated January 27, 1956 and recorded under Recording No. 4659959 and the True Point of Beginning;

Thence South 88°02'30" West to the East line of that tract of land conveyed to James A. Cavanaugh by deed dated December 8, 1885, and recorded under Recording No. 8870; thence South 1°58'00" East along said East line 283.80 feet, more or less, to the North line of a county road, being also the South boundary of a tract of land conveyed to Ralph E. Leber and La Vern June Leber, his wife, by deed dated February 4, 1955 and recorded under Recording No. 4543722;

Thence in an Easterly direction along the North line of said county road South 89°17'00" East 242.10 feet; North 78°06'00" East 239.10 feet; and North 87°14'00" East 330.61 feet, more or less, to said Southerly production of the West line of said South Third Avenue;

Thence North 1°55'37" West along said produced West line 249.16 feet, more or less, to the True Point of Beginning.

EXCEPT that portion conveyed to the City of Kent by deed recorded under Recording No. 20130129001427.

Amrik Commercial Rentals LLC
Tax Parcel Number: 000660-0079

Lot 1, City of Kent Short Plat Alteration File No. PTA-2008-1, recorded under Recording No. 20080207900001, records of King County, Washington;